

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MHAMMAD A. ABU-SHAWISH,

Defendant.

Case No. 03-CR-211-1-JPS

ORDER

On January 24, 2019, Mhammad A. Abu-Shawish (“Abu-Shawish”) filed a memorandum in support of a petition for a certificate of innocence. (Docket #330). The government responded and the petition is now fully briefed. (Docket #332 and #333). In order to obtain a certificate of innocence, the petitioner bears “the burdens of production and persuasion” to show that he is, by a preponderance of the evidence, innocent on the merits of the crime charged, and of similar crimes arising from his purported acts. *Pulungan v. United States*, 722 F.3d 983, 986 (7th Cir. 2013); *Abu-Shawish v. United States*, 898 F.3d 726, 739 (7th Cir. 2018). Abu-Shawish was charged with federal mail and wire fraud in connection with a plagiarized development plan. *Abu-Shawish*, 898 F.3d at 731. Therefore, the Court is tasked with determining whether the evidence shows that Abu-Shawish had “the requisite intent—either for federal mail or wire fraud or for a similar state crime.” *Id.* at 739.

The only new evidence that Abu-Shawish has submitted in support of his certificate of innocence is an affidavit, in which he explains that he did not realize that the development plan was plagiarized. (Docket #330-1). The government has called into question the affiant’s credibility. (Docket

#332 at 7–9). In response, Abu-Shawish asked for an evidentiary hearing on the issue of his credibility, which the government does not oppose. (Docket #333 at 7; Docket #334). When the only way for a petitioner to show “actual innocence” is by “testifying about his knowledge,” then the judge should hold an evidentiary hearing to determine “whether he is telling the truth.” *Pulungan*, 722 F.3d at 986. Therefore, the Court will refer this matter to Magistrate Judge Nancy Joseph in order to determine whether Abu-Shawish’s claim that he did not plagiarize with intent to deceive is credible.

Accordingly,

IT IS ORDERED that this matter is herewith referred to Magistrate Judge Nancy Joseph for an evidentiary hearing on the issue of Abu-Shawish’s credibility.

Dated at Milwaukee, Wisconsin, this 11th day of July, 2019.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge